

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

Reserved on 30.09.2019
Delivered on 15.10.2019

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.17506 of 2019

Global United Shipping India (P) Ltd.,
4th Floor, AKDR Tower, 3/281,
Rajiv Gandhi Salai (OMR)
Mettukuppam, Chennai-97. ...Petitioner

vs

Assistant Commissioner of Customs (Refund),
Chennai Customs House,
Rajaji Salai, Chennai 600 001.Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus to call for the records of the order in original No.67686/19 dated 22.02.2019 passed by the respondent and quash the same, consequently direct the respondent to grant interest on delayed refund of duty collected without any authority of law.

For petitioner : Mr.K.Senguttuvan
For Respondents : Mr.T.Pramod Kumar Chopda
Standing Counsel

O R D E R

The writ petition is filed challenging the Order in Original dated 22.02.2019, rejecting the interest claim made by the petitioner on the delayed refund amount of Rs.2,38,24,418/-.

2. The case of the petitioner is as follows:

The petitioner is a Shipping Company. A vessel belonging to the petitioner Company named "Jal Vahini" carrying 2040 pieces of wooden logs was docked in Chennai Port to unload the cargo. The Assessing Officer had assessed vide Bill of Entry No.000649 dated 04.07.2011 by considering the vessel "Jal Vahini" as an "import of goods" and insisted the petitioner to pay Countervailing Duty (CVD) on the same, while in fact, the vessel was a foreign going vessel temporarily docked in Chennai Port for unloading the cargo. As per the instruction from Tax Research Unit dated 25.03.2011, no duty shall be levied in

respect of foreign going vessel. Without considering the said Circular, the petitioner was forced to pay the duty of Rs.2,38,24,418/- , through challan dated 05.07.2011. However by placing reliance on the said Circular, the petitioner applied for a refund of the CVD. The respondent rejected the refund application on the reason that no appeal was filed against the assessment order. Thereafter, the petitioner filed an appeal against the assessment order in respect of the Bill of Entry No.000649 dated 04.07.2011. The Appellate Authority by order dated 22.08.2012, found that the duty collected was not sustainable and without authority of law and hence, granted liberty to the petitioner to apply for refund. Pursuant to the order of the Appellate Authority, the petitioner filed a refund claim again on 20.09.2012. The Adjudicating Authority through order dated 04.09.2014, rejected the refund claim on the reason that the petitioner had availed CENVAT credit of the CVD paid. Though the petitioner had initially availed the CENVAT credit, however before utilization, reversed the same in October 2013, much before the date of rejection of the refund application. This fact was not taken into consideration by the Adjudicating Authority and by the First Appellate Authority as well. The petitioner approached the CESTAT against those rejection orders. The CESTAT by its order dated 19.02.2018 remanded the matter to the Original Authority, directing him to verify the reversal of CENVAT. Pursuant to such direction, the respondent passed refund order dated 02.07.2018, sanctioning the refund of Rs.2,38,24,418/-. The petitioner was not granted any interest for the delay in sanctioning the credit. The petitioner filed an application dated 20.08.2018, claiming interest on the refund granted. The said application was rejected by passing the impugned order on the ground that CVD, which was collected, is only a "deposit" and not a "duty".

3. A counter affidavit is filed by the respondent, wherein it is stated as follows:

The amount collected from the petitioner was only deposit and not duty. Therefore, the same was not eligible for interest under Section 27A of the Customs Act, 1962. Further, the deposit was refunded under Order in Original dated 02.07.2018, pursuant to the CESTAT order dated 19.02.2018. Hence, there is no delay warranting payment of interest on the aforesaid deposit amount. The petitioner had failed to put forth the facts that they had availed the CENVAT credit on the duty paid and the reversal of credit was made only in October 2013. On verification, the Department found that the petitioner had availed CENVAT credit. Hence, the Adjudicating Authority rejected the claim. Any amount collected without authority of law only qualifies to be a "Deposit", which is not covered under the time frame for refund of the duty prescribed under the Customs provisions. The petitioner, having claimed the refund

by defining the amount deposited during the course of litigation as "deposit" distinct from "Customs duty", is not entitled to claim for interest under Section 27A of the Customs Act, 1962. Therefore, the claim of interest was rightly rejected through the impugned order. Article 226 of the Constitution cannot be invoked to direct the Authorities to act contrary to law. There is no enabling provisions under the Customs Act, 1962 to grant interest for "Deposit", which is distinct from "Duty".

4. Learned counsel for the petitioner submitted as follows:

a) Though a statutory appellate remedy is available against the order impugned, still the writ petition is maintainable on the reason that only this Court has to interpret the scope and ambit of Section 27A of the Customs Act, 1962, dealing with interest claim, more particularly, with regard to the maintainability of the application filed by the petitioner under the said provision of law in the aforesaid facts and circumstances. The writ petition is maintainable also on the ground that the Adjudicating Authority misinterpreted the decision of the Hon'ble Supreme Court in the case of M/s.Ranbaxy Laboratories Ltd. vs. Union of India, 2011(273) ELT 3 (SC). On merits, it is to be noted that the duty wrongly collected originally, was found to be incorrect by the Appellate Authority, also by permitting the petitioner to apply for refund of the same. Therefore, the interest is liable to be paid from the date of the application. The CENVAT credit availed by the petitioner was already reversed in October 2013 itself, before the date of rejection of refund petition. Therefore, availing of CENVAT credit also cannot be cited as a reason to reject the claim.

b) No fresh application was filed in 2018 for interest and on the other hand, the application filed in 2018 is only a reminder of the application filed in 2012.

c) In support of the above contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in M/s.Ranbaxy Laboratories Ltd. vs. Union of India, 2011(273) ELT 3 (SC).

5. Per contra, learned Standing Counsel for the Revenue contended as follows:

The writ petition is not maintainable, since a statutory appellate remedy is available to the petitioner. The refund application was rejected by the Original and Appellate Authority. The CESTAT, however, by order dated 19.02.2018, remanded the matter to the Original Authority, by directing him to verify the reversal of CENVAT. Accordingly, the Original Authority, without loss of further time, considered and passed refund order dated 02.07.2018, sanctioning the refund.

Therefore, there is no delay in sanctioning the refund and consequently, the petitioner is not entitled for interest from the date of his application. Moreover, even according to the petitioner, the amount collected was only "deposit" and not the "duty" and consequently, the said amount will not qualify for considering the claim under Section 27A of the Customs Act.

6. Heard both sides and perused the materials placed before this Court.

7. The points for consideration in this writ petition are as follows:

- a) Whether the writ petition is maintainable?
- b) If the writ is maintainable, whether the petitioner is entitled for the relief sought for?

8. Let me consider the maintainability issue first. It is true that as against the order in Original, impugned in this writ petition, an appellate remedy is available before the Commissioner of Customs (Appeals). However, it is well settled that availability of such alternative remedy itself cannot be a bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India, purely a discretionary one. Thus, exercise of such jurisdiction, despite the availability of alternative remedy, is vested with the discretion of this Court going by the facts and circumstances in each and every case. If the facts are in dispute, which require further enquiry, consideration and findings on the same, certainly this Court will relegate such exercise only to the next fact finding Authority, viz., Appellate Authority. In this case, I do not find any factual disputes between the parties except on the nomenclature of the amount paid by the petitioner, pursuant to the order of assessment. In other words, according to the Revenue, the amount collected from the petitioner was only a 'deposit' and not a 'duty' qualifying application of Section 27A of the Customs Act, 1962. The Revenue also sought to rely upon the claim made by the petitioner that the amount so collected was only a 'deposit' and thus, they are entitled for refund of the same. Therefore, this Court is of the view that in order to decide the nature of the amount so collected and subsequently refunded to the petitioner, as to whether it is the 'duty' or 'deposit', this Court can exercise its jurisdiction and decide the same, so as to further decide as to whether the consequential benefit of interest on the belated refund is payable or not. Thus, I find that the present writ petition is maintainable.

9. Now, let me first consider the issue as to whether the amount collected from the petitioner is a "duty" or "deposit".

10. Before answering the above question, it is better to understand the difference between term "duty" and "deposit". Certainly, both are not conveying the same meaning and intended purpose. While the "deposit", either offered by the importer/assessee on their own or in compliance of statutory obligation, pending disposal of a proceedings, is an act as an interim measure, the "duty" is the statutory liability collected as "revenue" to the Revenue on determination of the liability of the importer. In other words, while the "deposit" is made to safeguard the interest of the Revenue pending adjudication/determination of the liability of the importer to pay the duty, the "duty" is paid and collected by discharging the statutory obligation of such payment. No doubt, both 'duty' and 'deposit' are in the hands of the Revenue. At the same time, it is to be noted that right to credit or forfeit such deposit would arise only after determination of the liability to pay the 'duty'. On the other hand, the right over the duty so paid is instant on the revenue and not a postponed entitlement. Therefore, an amount so determined as 'duty' by processing the Bill of Entry and collected by the Revenue can never be termed as a "deposit", even assuming that such collection, later, is found to be either unlawful or excessive.

11. Keeping the above principle in mind, let me consider the present facts and circumstances of the case.

12. The petitioner is a Shipping Company. A vessel belonging to the Petitioner Company named "Jal Vahini" carried 2040 pieces of wooden logs and docked in Chennai Port to unload the said cargo. The said vessel Jal Vahini is a foreign going vessel and the cargo carried by the said vessel was cleared after following the customs procedures for import. However, the Customs Authorities treated the said vessel also as "goods" imported to India and consequently, asked the petitioner to file Bill of Entry for that vessel and consequently collected CVD at 5% with applicable education cess amounting to Rs.2,38,24,418/-. The said Bill of Entry No.000649 dated 04.07.2011 clearly demonstrates that the said sum of Rs.2,38,24,418/- was collected only as duty by the Customs Authorities and not as a deposit. Seal of approval and receipt of such payment by the Customs are evident on the face of such bill of entry. Therefore, now the Revenue cannot turn around and contend that what was collected is only deposit and not duty. Wrong or excessive collection of duty cannot make such collection as a deposit in the hands of revenue in order to escape from the clutches of Section 27A of the Customs Act to pay interest in the event of refund of such amount. The said Bill of Entry dated 04.07.2011 was put to challenge before the Appellate Authority, who in turn by order dated 22.08.2012, has observed as follows:

"The issue to be decided in the instant case is

that whether the ship docked in the port for unloading some commercial cargo can be charged to duty, treating the same as import of ship itself. From the records it is seen that the vessel though owned by the appellant docked at Chennai Port as any other foreign going vessel, can only be a temporary import. It is further proved that the same vessel left the port on foreign voyage to Myanmar. Hence, even though the bill of entry needs to be filed for temporary import no duty shall be chargeable as if treating the same as for home consumption. The TRU vide Circular No.B-1/2/2011-TRU dated 25.03.2011 had clarified that levy of CVD would not apply to such imports which are temporary in nature. Hence, at least on that count, the department should have desisted from charging CVD.

...7. In view of the above discussions and facts stated therein, I set aside the order of assessment and allow the appeal with consequential relief as per law. The appellant may apply for refund in accordance with the procedure laid down for the same."

13. Perusal of the above order of the Appellate Authority would show that the claim of the Revenue that the amount collected was only a "deposit" and not "duty", is factually incorrect and thus liable to be rejected.

14. The next question to be decided is as to whether the petitioner is entitled for interest on the amount refunded.

15. Section 27A of the Customs Act, 1962 deals with interest on delayed refunds. It reads as follows:

27-A. Interest on delayed refunds

If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below 5%] and not exceeding 30% per annum as is for the time being fixed [by the Central Government, by notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there

shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation.-Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [, the National Tax Tribunal] or any court against an order of the Assistant Commissioner of Customs [or Deputy Commissioner of Customs] under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal [, the National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.]

16. Perusal of the above provision of law would show that any duty ordered to be refunded under sub section (2) of Section 27 is to be refunded within three months from the date of receipt of application under Section 27(1) seeking for refund. If not paid within such time, the Revenue is bound to pay interest on such rate not below 5% and not exceeding 30% per annum on such duty immediately after the expiry of three months from the date of receipt of such duty. It should be noted at this juncture that the intention of legislature is clearly spelt out in the above provision of law that the interest is liable to be paid after the expiry of three months from the date of receipt of the application for refund and not from the date of passing of the order for refund. In my considered view, the object behind such provision for payment from the date of the application is obvious. Once an order of refund is made, liability to pay the same dates back from the date of its collection. In other words, an amount collected by the Revenue without authority of law or by erroneous application of provision of law, if retained by the Revenue all along without having any legal sanction to retain the same, such collection and retention would amount to unjust enrichment and thus liability to return or refund to the person from whom it was collected, commences from the day it was demanded and collected. Therefore, when a liability to refund is determined, such liability dates back and commences not from the date of the order for refund but from the date of such collection. Liability to refund begins when it actually due and not when it is actually determined. At this juncture, it is worth to note that while adjudicating the duty liability, the Adjudicating Authority also imposes interest and penalty on such duty liability. It is not that duty alone is collected from the importer from the date of adjudication and on the other hand, such liability to pay duty is fastened on such importer from the date when it becomes due. Therefore, the Revenue collects the

interest on such belated payment of duty and also penalty for not paying the same at the appropriate time. The same analogy is to be applied in the case of refund as well, while considering the payment of interest. That is why, Section 27A of the Customs Act was carefully coined for payment of such interest from the expiry of three months of the date of the application and not from the date of the order.

17. Based on the above principle, now let me consider the question regarding the entitlement of the petitioner for interest on the amount so refunded.

18. Before answering the said question, it is relevant to note certain dates and events. The petitioner originally filed refund claim on 01.11.2011 for refunding the said sum of Rs.2,38,24,418/- paid on account of customs duty. The said application was rejected on 29.03.2012 only on the ground that the petitioner has not filed appeal against the assessment order viz., in respect of Bill of Entry No.000694 dated 04.07.2011. In other words, the claim for refund was rejected on the ground that the original assessment made in respect of Bill of Entry treating the ship as goods of import, was not put to challenge. However, the fact remains that subsequently the petitioner challenged the order of assessment in respect of Bill of Entry No.000694 dated 04.07.2011 before the Appellate Authority, who in turn set aside the same and allowed the appeal by his order dated 22.08.2012 as extracted supra, wherein and whereby, the Appellate Authority has also permitted the petitioner to apply for refund in accordance with the procedure laid down for the same. Consequent upon such order, though the petitioner filed refund application once again on 20.09.2012, the Adjudicating Authority rejected the refund claim by his order dated 04.09.2014, mainly on the ground that the petitioner has already availed the CENVAT credit for the entire amount of duties paid and thus, they are not entitled for refund, as it would amount to double benefit. The said order of the Adjudicating Authority was further confirmed by the Appellate Authority by his order dated 29.05.2015, again on the same reason. However further challenge before the CESTAT resulted in remitting the matter back to the refund sanctioning Authority with a direction that such Authority shall verify whether the petitioner has reversed the credit before utilization. The said order was passed by CESTAT on 19.02.2018. Thereafter, the Original Authority as a consequence of the order passed by CESTAT, made denovo adjudication and ordered refund of Rs.2,38,24,418/- to the petitioner, by order dated 02.07.2018. Even in the said order, it is evident that the amount collected from the petitioner was referred as a 'duty' and not 'deposit', as claimed before this Court. Therefore, it is evident that the amount of duty

collected from the petitioner through the Bill of Entry dated 04.07.2011 is a wrong and invalid collection and thus not sustainable in law. Therefore, the Revenue has rightly refunded the said sum to the petitioner by order dated 02.07.2018.

19. It is seen that an amount of Rs.2,38,24,418/- was collected as 'duty' from the petitioner in respect of Bill of Entry No.000694 dated 04.07.2011 by passing an order of assessment. There is no dispute to the fact that the said amount was refunded by passing an order dated 02.07.2018 as stated supra. Thereafter, the petitioner filed an application for grant of interest on delayed refund, through his application dated 20.08.2018. According to the Revenue, since the refund was made immediately after the order of the CESTAT, there is no delay and consequently, there is no liability to pay interest. On the other hand, it is the case of the petitioner that the liability to pay interest commences from the date of receipt of the application for refund and not from the date on which the order for refund was made. In support of the above contention, the learned counsel for the petitioner relied on the decision of the Apex Court reported in 2011 (273) ELT 3 (SC), Ranbaxy Laboratories Ltd. vs. Union of India (UOI), where the Apex Court has considered the scope of pay of interest under Section 11BB of the Central Excise Act, 1944, which is pari materia of Section 27A of the Customs Act, 1962. The question that arose before the Apex Court was whether the liability of the Revenue to pay interest under Section 11BB of the Central Excise Act, 1944 commences from the date of three months from the date of receipt of application for refund or on the expiry of the said period from date of the order of refund is made. After elaborately considered the said issue, the Apex Court answered the said issue by observing at paragraph Nos.8, 9, 10 and 15 as follows:

"8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under:

11B. Claim for refund of duty.-(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in Section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was

collected from or paid by him and the incidence of such duty and interest if any, paid on such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this Sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of Sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the

opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made there under or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

(4)...

(5)...

Section 11BB, the pivotal provision, reads thus:

11BB. Interest on delayed refunds.-

If any duty ordered to be refunded under Sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under Sub-section (2) of section 11B in respect of an application under Sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under Sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said Sub-section (2) for the purposes of this section.

9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the

application to be submitted under Sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under Sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate v. Inland Revenue Commissioners (1921) 1 K.B. 64 and Ajmera Housing Corporation and Anr. v. Commissioner of Income Tax MANU/SC/0623/2010 : (2010) 8 SCC 739.

...15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

20. Perusal of the facts and circumstances of the above case before the Apex Court and the present case would show that

they are identical in nature and only difference is that the interest claim before the Apex Court arises under the Central Excise Act whereas in the present case, it arises under the Customs Act. I have already pointed out that Section 11BB of the Central Excise Act and Section 27A of the Customs Act are pari materia and therefore, I find that the above decision is squarely applicable to the present facts and circumstances of the case, which the Adjudicating Authority has failed to apply and follow.

21. Therefore, it is evident that the liability to pay interest would commence from the date of expiry of three months from the date of application for refund and not on the expiry of the said period from the date on which the order of refund was made. In this case, admittedly, the refund application was made by the petitioner on 20.09.2012. No doubt, the said application was rejected by the Original Authority and the same was confirmed by the Appellate Authority. However, before the CESTAT, the petitioner succeeded and got the matter remanded back to the refund sanctioning authority, who ultimately granted the refund on 02.07.2018. Merely because the petitioner has not succeeded before the Original and Appellate Authority, it does not mean that the date of his application for refund gets altered as the one in pursuant to the order of the CESTAT. In other words, his application for refund dated 20.09.2012 was ultimately considered and granted on 02.07.2018 and therefore, the interest under Section 27A of the Customs Act, 1962 is liable to be paid to the petitioner from the date of expiry of three months from the date of receipt of their refund application. The Adjudicating Authority in this case has erroneously rejected the interest claim by misconstruing the payment as deposit instead of duty and also by misinterpreting the law laid down by the Apex Court in Ranbaxy case.

22. Therefore, I find that the order of the respondent, impugned in this writ petition, cannot be sustained. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the respondent is directed to pay interest with permissible percentage under law, from the date of expiry of three months from the date of receipt of the refund application dated 20.09.2012. Such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri

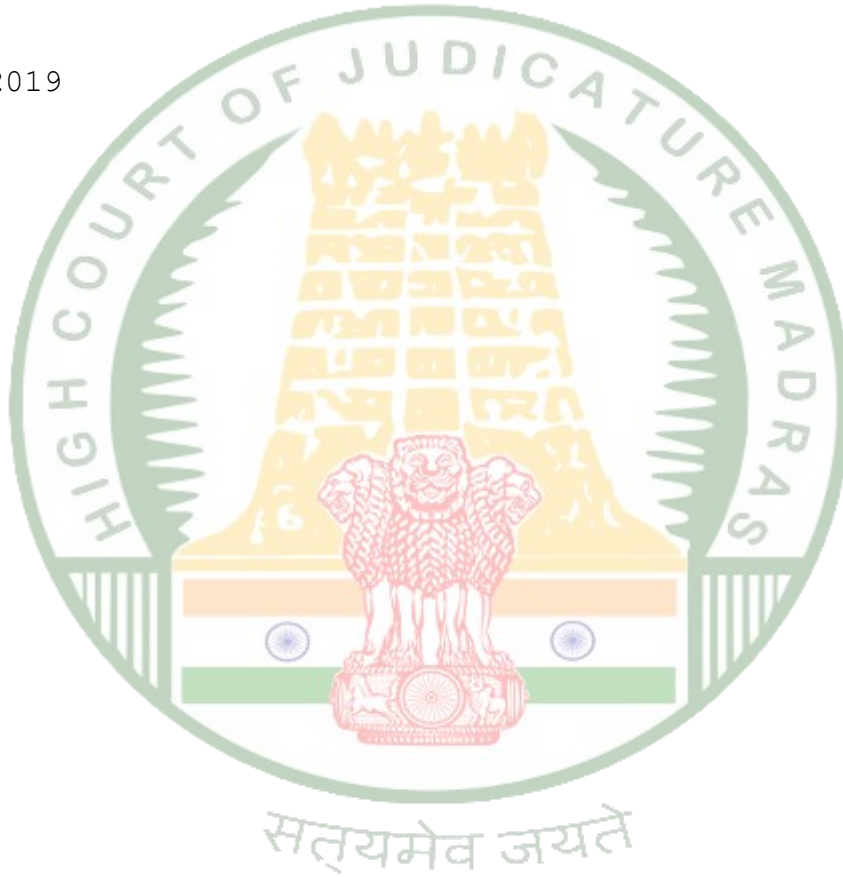
To

Assistant Commissioner of Customs (Refund),
Chennai Customs House,
Rajaji Salai, Chennai 600 001.

+lcc to Mr.T.Pramod Kumar Chopda, Advocate sr.85868

W.P.No.17506 of 2019

spd(co)
nr 13/11/2019



WEB COPY